

**CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
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**CALIFORNIA CODE OF REGULATIONS
ADOPTION OF SECTIONS 443, 444, 445, 446 AND 447
OF TITLE 12**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Department of Veterans Affairs (CalVet), California State Approving Agency for Veterans Education (CSAAVE), operates under contract with the U.S. Department of Veterans Affairs (USDVA). Under the authority of federal law, Title 38 United States Code (USC), the CSAAVE approves or disapproves veterans' education and training programs, prevents abuses, and promotes quality in veterans' education by evaluating and monitoring education and training programs. CSAAVE oversees an approximate annual \$3.5 billion in federal Title 38 education funds, dispersed to California schools, colleges, universities, facilities, and beneficiaries.

CalVet proposes to adopt California Code of Regulations (CCR), Title 12, sections 443, 444, 445, 446, and 447 concerning additional requirements on postsecondary educational institutions seeking to enroll veterans or persons eligible for Title 38 awards.

PROBLEM STATEMENT AND PURPOSE

Education Code (EC) Sections 67100, 67101, and 67102 grant CSAAVE administrative control over the Title 38 Funding Program. Postsecondary educational institutions and programs seeking to enroll veterans or persons eligible for Title 38 awards must receive CSAAVE approval for these courses. Toward that end, CSAAVE may require the postsecondary institution or program to comply with all federal and state laws and regulations as well as additional reasonable criteria established by CSAAVE. Beginning in the 2016-2017 award year, the postsecondary institution or program must also have its approval to operate from the Bureau for Private Postsecondary Education (BPPE) certified by CSAAVE or be a California public college or university.

Currently, CSAAVE has not adopted comprehensive criteria for Title 38 funding. Without regulations, postsecondary educational institutions and programs will continue to target Title 38 beneficiaries without improving either the quality of education, graduation and/or placement outcomes for those recipients.

Regrettably, there is a history of abuse by some Title 38 schools and program recipients, including the documented waste of large amounts of public monies, and more importantly, the taking of monies and years of entitlement from the intended beneficiaries without adequate benefit. These disappointing outcomes have been documented in audits, Congressional reports

and numerous other sources. More specifically, the rationale for rules to prevent historical and predicted abuse is driven by numerous factors, including the following:

1. The higher maximums for tuition assistance and for living expenses for veterans under Title 38 *vis-à-vis* public assistance to other populations; a justifiable disparity, but one that creates an incentive for marketing abuse;
2. The irreparable harm that can flow from years of education without beneficial outcome, including the common private borrowing by students, which can create hardship where expected employment does not occur, including credit ruination and other consequences;
3. Congressional intent that veterans receive reliable assistance to achieve self-sufficiency and success.

These and other factors warrant a preventive strategy that is based on bright-line criteria that closely correlate with abuse prevention or education success including the empirical record of graduation, job qualification, subsequent employment, debt management, and other measurable performance factors. The rules also ensure that CSAAVE is able to apply and enforce state, federal, and accreditation rules, standards, and requirements to protect student veterans and other eligible Title 38 beneficiaries against a postsecondary institution or program's fraudulent or predatory practices. These rules apply to all postsecondary institutions desiring to enroll veterans and other eligible Title 38 beneficiaries in education and training programs offered in California.

Without being unduly burdensome, the proposed regulations build upon the recent performance standards for the broader state higher education Cal Grant subsidy, state and federal licensing and approval rules, standards, and requirements and establishes baseline accreditation, graduation, advertising, and academic performance requirements appropriate for this distinct population.

BENEFITS

The proposed regulations will add protections for California veterans not currently in place. Applying the standards currently in place for the Cal Grant subsidy ensure a consistent application of state requirements for higher education institutions, while protecting veterans and ensuring they will receive the educational benefits they expect and should acquire when enrolled in a state-approved Title 38 program.

AUTHORITY

California Military and Veterans Code (MVC) Section 700 gives CalVet the authority to adopt, amend, or repeal regulations concerning the aid and welfare of California veterans. Additionally Title 38 U.S. Code and Title 38 Code of Federal Regulations gives California the ability to develop reasonable criteria relating to ascertaining school qualifications for the training of veterans and other eligible persons.

NECESSITY

The specific purpose for each proposed amendment or adoption is as follows:

Section 443 defines terms used in the regulations. This is necessary for the reader to be able to easily understand the meaning of the defined term or phrase as used in the regulations.

Section 444 requires institutions be accredited in accordance with California EC 67102 or be issued a waiver by the USDVA under 38 USC 3676 section(f)(1). This is necessary to ensure the California institutions comply with all federal and state laws and regulations regarding accreditation and the authority to operate as a California Private Postsecondary Institution.

Section 445(a)(1) requires institutions to comply with EC 67100. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(a)(2) requires institutions to comply with any standard, policy, rule, law, or requirement used in consideration for a grant of program approval by CSAAVE under EC 67100 (c). This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(a)(3) requires qualifying institutions and programs provide information on their graduates' license examination passage rates, graduation completion rates, and the cohort default rate current or most recent year preceding the application submitted to CSAAVE for approval consideration and certify this requirement to CSAAVE. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility. The metrics for this portion of the section are modeled on the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant program, which provides standardized criteria and expectations for a successful educational institution capable of servicing Cal grant recipients. EC section 69432.7 provides the metrics used in this section. The Cal Grant metrics allow CSAAVE to accomplish the goals of 38 USC 3676 using standards commonly applied to post-secondary schools within California.

Section 445(a)(4) requires qualifying institutions and programs to demonstrate financial stability. This is necessary to ensure that the qualifying institutions and programs can assure their students they can complete their education. This is a requirement of 38 CFR 21.4254(c)(9), which requires schools to demonstrate their financial ability to fulfill their commit to training veterans.

Section 445(a)(5) requires all qualifying postsecondary institutions and programs to comply with state and federal provisions on advertising, representations, claims, and marketing. All advertising showed to veterans must be truthful and comply with the Unfair Competition Law and the Consumer Legal Remedies Act. This section is necessary to ensure these institutions' advertising and representations made to veterans and other individuals eligible for Title 38 are neither fraudulent nor deceitful. 38 CFR 21.4254(c)(10) prohibits misleading advertising.

Section 445(a)(6) requires institutions and programs to comply with state and federal disclosure standards and requirements. All advertising showed to veterans must be truthful and comply with the Unfair Competition Law and the Consumer Legal Remedies Act. This section is necessary to ensure these institutions' advertising and representations made to veterans and other individuals

eligible for Title 38 are neither fraudulent nor deceitful. This is necessary to ensure the institutions and programs comply with state federal requirements and standards applying to Title 38 eligibility, and to prevent an institution from misrepresenting that it has such approval from the Department of Education or CSAAVE.

Section 445(a)(7) requires the institution or program to provide URL links to the CSAAVE websites. This is necessary to help prospective students make informed decisions about their academic future and to inform students of the approval status of the institution and its program(s).

Section 445(b)(1) requires institutions to comply with EC 67100. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility.

Section 445(b)(2) requires institutions to satisfy requirements necessary to allow a student who completes the educational program to qualify to take any required licensing or certification exam. This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility, and to assure student success. This is a requirement of 38 United States Code sections 3675(b)(3) and 3676(c)(14)-(15).

Section 445(c) requires qualifying institutions and programs to conduct an “employment market assessment” at program creation and submit the assessment to CSAAVE. This is necessary to substantiate student outcomes following graduation and demonstrate that the institution or program is responding to job market conditions and substantiate advertising claims.

Section 445(d) authorizes CSAAVE to utilize the institution’s or program’s compliance with any standards, rules, and/or requirements prescribed by any state or federal licensing or approving agency or entity, and any accrediting body, agency, or association, as a basis for a grant of CSAAVE approval. This is necessary to ensure that CSAAVE does not grant approval for non-compliant institutions and programs and prevent veterans and other eligible persons from enrolling and losing Title 38 education benefits.

Section 446 requires institutions to provide CSAAVE copies of all documents and other materials concerning the institution and its programs for which approval is sought, including all documents maintained by the governmental, accrediting, or licensing agency or entity. This is to ensure CSAAVE has knowledge of the licensing and/or approval status of an institution or its approved programs offered in California.

Section 447 authorizes CSAAVE to suspend the approval of a course for new enrollment, or suspend approval of a licensing or certification test, pursuant to 38 Code of Federal Regulations (CFR) section 21.4259(a)(1). It also provides the authority to immediately disapprove a course, licensing or certification test, pursuant to 38 CFR Section 21.4259(a)(2) and 38 USC section 3679.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

CalVet used a report by the Senate Health, Education, Labor, and Pensions Committee titled *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* in proposing the adoption of these regulations.

ECONOMIC IMPACT ASSESSMENT

This regulation serves to provide guidance to CalVet to determine whether qualifying institutions or programs using Title 38 funds meet additional requirements consistent with the appropriation of those funds. The allocation of the Title 38 Funding Program would be affected but not necessarily the amount. While some Title 38 institutions may not qualify with the application of the state and federal standards, CalVet does not expect a reduction in the number of veterans enrolled in Title 38 eligible institutions. Schools that do not qualify will still operate without the Title 38 funding.

CalVet expects no increase workload for the staff involved in reviewing the material provided by Title 38 eligible institutions for the CSAAVE program, because this work is already being done, using the federal regulations as a guide. Also, CalVet expects a reduction in the legal costs needed to defend the required standards. These functions are now performed by the Attorney General's office.

Creation or Elimination of Jobs within the State of California

While it is likely that some Title 38 eligible institutions will see an increase in enrollment as veterans seek more legitimate educational opportunities, the numbers should be small enough that these institutions are not required or find the need to expand or reduce their staff levels. CalVet does not see businesses creating or eliminating any jobs as a result of these regulations.

Creation of New or Elimination of Existing Businesses Within the State of California

While some businesses are likely to realize an increase in enrollment, it is unlikely that any new Title 38 eligible institutions will be created as a result of the regulations. Similarly, the educational institutions that do not qualify as Title 38 eligible may be impacted, but not at a level that would cause them to cease operations. CalVet does not see any creation or elimination of businesses as a result of these regulations.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

While some businesses are likely to realize an increase in enrollment, it is unlikely that any new Title 38 eligible institutions will be created as a result of the regulations. Similarly, the educational institutions that do not qualify as Title 38 eligible may be impacted, but not at a level that would cause them to cease operations. CalVet does not see any expansion or elimination of businesses as a result of these regulations.

Benefits of the Regulations

CalVet anticipates that the regulations will benefit both veterans and the public. The regulations will help veterans acquire education that leads directly to employment opportunities within California, by ensuring that Title 38 eligible institutions are offering programs with this goal as a proven expectation. California veterans will also benefit from gaining the education they expected to receive without losing their time, money and eligibility to unqualified and abusive institutions. The public will benefit by having a better workforce available, with skills designed to be applicable to employers' ongoing needs.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulations will not have a significant net adverse impact upon businesses in California. The regulations primarily pertain to a fraction of federal funds. However, the basis for that impact is a failure to meet minimum standards common to post-secondary institutions designed to create employable student veterans. Students, who seek alternative educational opportunities, including other publicly-subsidized options, may have a better chance of employment in their chosen field. Some Title 38 eligible institutions will collect less GI Bill funding when they lack the required information, such as employment market surveys and license pass rates for their students. It should also mean more veterans employed as a result of their GI Bill benefits. Finally, the institutions and program that meet minimum Title 38 eligibility standards will enjoy demand increase and stimulation of business and employment.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

CalVet has determined that no reasonable alternative has been identified or brought to its attention. Taking no action would lead to the continued vulnerability of California veterans to institutions that take advantage of the veteran and do not deliver the advertised or claimed educational outcomes the veteran should expect. The proposed regulations establish the minimum requirements considered necessary to protect California veterans and their earned Title 38 educational benefits.